

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

FILED

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U.S. DISTRICT COURT  
N.D. OF ALABAMA

VICTOR BATES, et al.,

Plaintiffs,

v.

KRAFT FOODS NORTH AMERICA,  
INC. et al.,

Defendants.

CIVIL ACTION NO.

02-AR-1946-S

**ENTERED**  
OCT 7 2002

MEMORANDUM OPINION

For reasons unknown to the court, motions filed by defendants, Bruce Cox ("Cox") and Kraft Foods North America, Inc. ("Kraft"), on September 3, 2002, were re-filed on September 16, 2002.

On September 17, 2002, the court entered an order expressly informing plaintiffs that if they failed to file proof of their right-to-sue within **fourteen (14) days**, their action, insofar as it purports to invoke Title VII, would be dismissed without prejudice. Plaintiffs have not filed anything since September 17, 2002, and have never responded to the motions to dismiss filed by Cox and Kraft.


Even if plaintiffs had been able to file a right-to-sue, Cox would be entitled to a dismissal with prejudice of any Title VII claim, because he was never plaintiffs' employer.

Both the motion to dismiss filed by Cox and the motion to dismiss filed by Kraft point out that plaintiffs cannot invoke 42 U.S.C. § 1981 as a basis for a federal claim, because that statute

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was never designed for, and cannot be used for, a gender based harassment claim. Because the Title VII claim and the § 1981 claim have both evaporated, no subject matter jurisdiction exists under 28 U.S.C. § 1331, so that plaintiffs' pendent state law claims have no federal claim upon which to append. Because the court cannot proceed without subject matter jurisdiction, the entire action, even as against the non-served defendants, will, by separate order, be dismissed without prejudice.

DONE this 7<sup>th</sup> day of October, 2002.

  
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WILLIAM M. ACKER, JR.  
UNITED STATES DISTRICT JUDGE